IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.4612 OF 2003

State of Maharashtra. ...Petitioner.
Versus
Narsinh Manya Bapu Bhosale. ...
Respondent.

.....

Mr. C. R. Sonawane, AGP for the Petitioner.
None for the Respondent.

.....

CORAM : KSHITIJ R. VYAS, C.J. &
DR. D.Y. CHANDRACHUD, J.

April 25, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

Rule, by consent of Counsel returnable forthwith. By consent of Counsel and at the request of Counsel taken up for hearing.

2. The State of Maharashtra has instituted these proceedings to challenge a judgment and order of the Maharashtra Administrative Tribunal, dated 23rd March 2001.

3. In 1983, the Respondent was selected for appointment to the post of Police Sub Inspector as a direct recruit. In 1995, he was promoted as Assistant Police Inspector. The Respondent instituted proceedings before the Maharashtra Administrative Tribunal, claiming entitlement to promotion to the post of Police Inspector with effect from 25th October 2000 and a direction to the State to issue orders of promotion with effect from the date on which his immediate junior was promoted, together with consequential service benefits including seniority and arrears of pay. The application filed by the Respondent was allowed by the Tribunal with a direction to the State Government to promote the Respondent to the post of Police Inspector from the date on which his juniors were promoted with all consequential benefits.

4. Prior to the proceedings before the Tribunal, the Departmental Promotion Committee had considered the candidature of the Respondent, but was of the view that he was not fit for promotion in the year 2000 and he was accordingly superseded by orders dated 25th and 27th October 2000. A

representation was submitted to Government on 10th November 2000 but barely a month thereafter, the Tribunal was moved on 20th November 2000.

5. The Tribunal allowed the application. The criteria for promotion to the post of Police Inspector, the Tribunal noted, was seniority-cum-fitness and the average grading required for the relevant period was “B”. In the year 1995-96, the Respondent was given a grading of B; for 1996-97 a grading of B+; for the year 1997-98 a grading of 'C' ; for the year 1998-99 a grading of B and for the year 1999-2000 a grading of B+. There was a remark in the column of average grading to the effect, “await one ACR”. It appears that for the year 1997-98, more specifically for the period 18th June 1997 to 21st September 1997, the remarks by the Reporting Officer were “good”, while for the period 22nd September 1997 to 3rd February 1998, the remarks were “satisfactory”. The Reviewing Officer, namely, the S.P. Satara, however, issued an adverse remark to the following effect :

> “Slack in supervision and slow in response. Had to be shifted from Mahabaleshwar Police Station. Deliberately

> reported sick after transfer, from 12-2-1998 to 23-2-1998 till date."

The Tribunal sat in judgment over the correctness of the adverse remarks issued by the Reviewing Authority, namely, the S.P. Satara. The Tribunal was of the view that for the previous year most of the remarks by the Reporting Officer were "good" and against one column it the remark was "very good" and the Reviewing Authority had agreed. During the annual inspection for the year 1997, the DIG, Kolhapur Range has commended the work of Mahabaleshwar Police Station. On this state of the record, the Tribunal held as follows:

> "Considering all these things the DPC ought to have given the grading B instead of C for the year 1997-98. In that event the average grading would be more than B. In fact the average grading as per the grading of each year from 1995-96 to 1999-2000 as given by the DPC itself would be "B". The grading B+ are given by DPC for two years, 'B' for two years and ' C for one year. The average would obviously by "B"; and there was no need to postpone the promotion of the applicant by making a remark by the DPC, in the average column, as "Await one ACR". In the circumstances, there is no need to send the case for reconsideration by Review DPC, but the respondents can straightway be directed to give promotion to the applicant."

6. In our view, there is merit in the submission which has been urged on behalf of the State by the Learned AGP. The Tribunal has erred firstly by substituting its own view for the view of the Reviewing Officer and consequently in directing that promotion should be granted to the Respondent without having a Review DPC convened. There were admittedly adverse remarks by the S.P. Satara as Reviewing Authority for 1997-98 according to which, the Respondent was slack in supervision and slow in response. He had to be shifted from the Police Station at Mahabaleshwar and he had deliberately reported sick after the transfer. In our view, the Tribunal was without justification whatsoever to substitute its own view for the grading given to the officer for 1997-98 by a grading which appeared to the Tribunal to be fair and proper having regard to the remarks for the prior period. The Tribunal clearly overstepped the limits of its jurisdiction in doing so. Apart from this, even if the Tribunal were to come to the conclusion that the officer had wrongly been denied promotion, it was clearly inappropriate for the Tribunal to direct that promotion be granted to

him straightway. Instead the appropriate order should have been to direct that a Review DPC be convened by the State Government. On the view which we have formed, there was no question of directing the convening of a review DPC since on the basis of the remarks for the year 1997-98, the DPC was justified in declining to recommend the Respondent for promotion at that stage, and in determining that one more ACR be awaited.

7. At the hearing of this petition, which was instituted sometime in June 2002, to challenge the order of the Tribunal dated 23rd March 2001, we had asked the Learned AGP to take instructions regarding the position as it obtained as of date. The Learned AGP informed the Court that in 2000, the DPC was of the view that it was appropriate to await one more ACR. A review DPC was subsequently held on 23rd October 2001 and the Respondent was found fit for promotion. The Respondent was accordingly promoted on 19th November 2001 as Police Inspector. The Learned AGP has made the aforesaid statement on instructions that were received by him. Having regard to the aforesaid position

and since the Respondent has subsequently been considered, was found fit for promotion and was accordingly promoted, nothing further really remains in this matter. However, the Learned AGP has submitted and, in our view not without justification, that it was necessary for this Court to set the record straight by adjudicating on the contention that the Tribunal has overstepped the limits of its jurisdiction by giving the directions which are impugned in this petition. For the reasons noted above, we allow the petition by setting aside the impugned order of the Tribunal dated 23rd March 2001, We, however, record the statement that was made on behalf of the State by the Learned AGP that the Respondent being found fit for promotion by the review DPC in 2001, has in fact, been promoted to the post of Police Inspector on 19th November 2001. That shall not be affected by this order. The petition shall stand accordingly disposed of. No order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.